



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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HEDGEYE RISK MANAGEMENT, LLC,

Plaintiff,

- against -

DARIUS DALE, et al.

Defendants.  
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21-CV-3687 (ALC) (RWL)

**ORDER**

**ROBERT W. LEHRBURGER, United States Magistrate Judge.**

This order resolves the issue concerning Plaintiff's motion at Dkt. 379 to compel further deposition of Collin de Rahm and for sanctions in regard to defense counsel's directions not to answer certain questions. Having considered the matter, and having reviewed the correspondence and the de Rahm deposition transcript, the Court determines as follows.

First, defense counsel improperly instructed the witness not to answer certain questions for which assertion of the attorney-client or other privilege did not apply. If defense counsel believed the questioning was improper, the appropriate procedure was to halt the deposition (or, better, defer all questions at issue to the end of the deposition so all other matters could be covered) and move for a protective order.

Second, a party is not categorically precluded from using at deposition documents and information not produced during discovery if the material was not responsive to any discovery requests. At the same time, Plaintiff's counsel clearly engaged in gamesmanship and intentional surprise, contrary to the principles of disclosure that undergird the Federal Rules of Civil Procedure.

Third, notwithstanding defense counsel's directions not to answer, Plaintiff's counsel was able to obtain answers to questions addressing all relevant substantive subject matter and even with respect to the subject matter about which defense counsel directed the witness not to answer. The unanswered questions largely address authentication of employment documents and email that speak for themselves. The appropriate remedy is for Plaintiff to pose requests for admission as to authenticity, or for the parties to stipulate to the documents' authenticity.

Fourth, the Court finds that Plaintiff's characterization of de Rahm's testimony distorts the actual record in part, particularly with respect to the Hedgeye marketing video.

Considering all the circumstances, Plaintiff's motion is DENIED. The Clerk of Court is respectfully requested to terminate the motion at Dkt. 379.

SO ORDERED.



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ROBERT W. LEHRBURGER  
UNITED STATES MAGISTRATE JUDGE

Dated: November 22, 2022  
New York, New York

Copies transmitted this date to all counsel of record.